

REPLY UNDER 37 CFR 1.116 - EXPEDITED PROCEDURE - TECHNOLOGY CENTER 3683REMARKS

This request is in response to the Official Action dated October 3, 2005. Claims 1 and 9 have been amended. Claims 1-4, 6-11, 14-16 and 18-21 remain in the application with Claims 1, 9 and 16 being the only independent claims. Favorable reconsideration, in view of the accompanying remarks, is respectfully requested.

Initially, it is noted that the Official Action did not address whether the proposed changes to the drawings and the specification, which were included in the Amendment filed July 29, 2005, are accepted/approved by the Examiner. A telephone call was made to the Examiner on December 26, 2005, to discuss this issue but the Examiner could not be reached. Since this paper is being filed on the next day, December 27, 2005, it is respectfully requested that the Examiner formally address this issue in the next action issued in this case.

In the Official Action, the Examiner has rejected: Claims 1-2, 6-10, 14-16, 18 and 20-21 under the provisions of 35 U.S.C. 103(a) as being unpatentable over Evans (5180037) in view of Ikeda (6390248) and further in view of figure 3 of applicant's admitted prior art in the instant application; Claims 3-4 and 11 under the provisions of 35 U.S.C. 103(a) as being unpatentable over Evans (5180037) in view of Ikeda (6390248) and further in view of figure 3 of applicant's admitted prior art in the instant application and even further in view of Hara et al. (6427653); and Claim 19 under the provisions of 35 U.S.C. 103(a) as being unpatentable over Evans (5180037) in view of Ikeda (6390248) and further in view of figure 3 of applicant's admitted prior art in the instant application and even further in view of Heckel (6116103). These rejections are respectfully traversed for the following reasons.

Claim 1 recites in part:

the drum-in-hat parking and emergency brake includes a park brake cable end assembly including a lever pivotally supported on a link and a parking brake cable operatively connected to the lever, the lever including a main body, a first end and a second generally *G-shaped end which is adapted to accommodate either the parking brake cable having a S-shaped cable end or a clevis shaped cable end*, the G-shaped end having a rear leg, a bottom leg, a front leg and a

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slot formed therein, the slot including an outermost opening defined between a first surface of the front leg and a surface of the main body, an intermediate opening defined between a surface of the rear leg and a second surface of the front leg, and an innermost opening defined between the surface of the rear leg and a third surface of the front leg, wherein at least a portion of the surface of the main body is spaced apart from and in overlaying relationship with at least a portion of the first surface of the front leg so as to project over and cover the at least a portion of the first surface of the front leg and wherein when the parking brake cable is connected to the lever said parking brake cable can be pulled only in the direction of the front leg. (Emphasis added).

None of the cited references, alone or in combination, discloses or suggests such a drum-in-hat disc brake assembly having the "specific limitations" recited above in Claim 1.

Specifically, neither Evans (5180037), Ikeda (6390248), figure 3 of applicant's admitted prior art, Hara (6427653) nor Heckel (6116103) discloses or suggests the *limitations required above in Claim 1* that the drum-in-hat parking and emergency brake includes a park brake cable end assembly including a lever having a "G-shaped end which is adapted to accommodate either the parking brake cable having a S-shaped cable end or a clevis shaped cable end"; that the slot includes "an outermost opening defined between a first surface of the front leg and a surface of the main body"; and that the lever "main body is spaced apart from and in overlaying relationship with at least a portion of the first surface of the front leg so as to project over and cover the at least a portion of the first surface of the front leg and wherein when the parking brake cable is connected to the lever said parking brake cable can be pulled only in the direction of the front leg". The Examiner states that Ikeda (in Fig. 7) teaches a lever that is generally G-shaped having a rear leg (90), a bottom leg (93), a front leg (hook portion) and a slot formed therein. However, the Claim 1 requires that: 1) the slot include three openings, namely *an outermost opening, an intermediate opening and an innermost opening*; 2) at least a portion of said surface of said main body is spaced apart from and in overlaying relationship with at least a

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portion of said first surface of said front leg so as to *project over and cover* said at least a portion of said first surface of said front leg; and 3) wherein when said parking brake cable is connected to said lever said parking brake cable *can be pulled only in the direction of said front leg.* (Emphasis added). Ikeda clearly discloses in Fig. 7 that: 1) the slot does not include three openings but only two openings (this is because of #2); 2) that no portion of the main body overlies a portion of the front leg (i.e., this is why the slot only includes two openings); and 3) that the parking brake cable must be pulled in the direction of the bottom (i.e., rear) leg (93) as shown by the arrow labelled "Pulling Direction" in Fig. 7. Thus, one simply needs to look at Fig. 7 in Ikeda to see that Ikeda clearly does not disclose: 1) that the slot includes three openings, namely *an outermost opening, an intermediate opening and an innermost opening*; 2) that a portion of main body *overlies* a portion of the front leg (hook portion); and 3) that the cable can be pulled in *only the direction of the front leg*, as required by Claim 1. Thus, since Ikeda does not disclose the above limitations required by Claim 1, it follows that modifying Evans with the "G-shaped" lever end of Ikeda would not disclose the above limitations required by Claim 1. Accordingly, it is believed that Claim 1, along with dependent Claims 2-5, 7 and 8, are patentable over the cited references.

Claim 9 contains similar limitations to that of Claim 1. Accordingly, for those reasons discussed above with respect to Claim 1, it is believed that Claim 9, along with dependent Claims 10, 11, 14, 15 and 21, are patentable over the cited references.

Claim 16 contains similar limitations to that of Claim 1. Accordingly, for those reasons discussed above with respect to Claim 1, it is believed that Claim 16, along with dependent Claims 18, 19 and 20, are patentable over the cited references.

Further, regarding dependent Claim 6, the Examiner states in paragraph 2 of the Official Action that the end portion of Ikeda has the same shape as that of the instant application and therefore meets the limitations of Claim 6. However, Claim 6 requires a first, a second and a third opening dimension. As discussed above, Ikeda in Fig. 7 clearly only discloses two openings and such can only disclose a first and a second opening dimension. Ikeda does not disclose the three opening dimensions required by Claim 6 because, as discussed above, Ikeda does not disclose that a portion of the

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main body overlies a portion of the front leg. Thus, it is believed that dependent Claim 6 is further patentable over the cited references.

Dependent Claims 14 and 18 contains similar limitations to that of Claim 6. Thus, it is believed that dependent Claims 14 and 18 are further patentable over the cited references.

In paragraph 5 of the Official Action, the Examiner makes the following statements: 1) "The novelty of applicant's lever seems to be in the fact that either an S-shaped or a clevis shaped cable end can be used with the lever"; 2) "The Examiner would like to point out that no where in the drawings is it shown the way in which either of these cables can connect to the lever of the instant application"; and 3) "The rejection stands because applicant has not provided enough evidence that the shape of the lever is an improvement over prior levers. Please see In re Seid, 161 F.2d 229, 73 U.S.P.Q. 431 (CCPA 1947) and In re Dailey, 357 F.2d 669, 149 U.S.P.Q. 47 (CCPA 1966)."

The Examiner's above first statement is correct – applicant's lever is novel because it allows either an S-shaped or clevis shaped cable end to be used with such lever. This request would like to focus on the Examiner's above second and third statements.

Regarding the above second statement, while the Examiner is correct that the drawings do not explicitly show the way in which the S-shaped or clevis shaped cable end connect to applicant's lever, it is obvious to one of ordinary skill in the art how these two prior art cable ends would connect to applicant's lever in view of the detailed description and specification of the invention set forth in accordance with 37 C.F.R. 1.71, including the drawings. First, the two prior art cable ends are shown in prior art Figs. 2 and 3 with their respective prior art levers. It is noted that even in these two prior art figures the prior art cable ends are shown unconnected to the respective prior art levers but it is obvious to one of ordinary skill in the art how each prior art cable end connects to the associated prior art lever. Thus, since the two prior art cable ends are shown in the drawings, it is not necessary nor required by the Patent Rules to show them physically connected to applicant's lever since how they would

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connect is clear to one of ordinary skill from the drawings and detailed description and specification of the invention set forth in the instant application. Thus, the instant application clearly discloses to one of ordinary skill in the art how applicant's novel lever can be used with both of the prior art cable ends shown therein.

Regarding the above third statement and the cases cited by the Examiner, these two cases cited by the Examiner are distinguishable from the issue presented by the claims in the present application. In the first case, *In re Seid*, the claims at issue were found not to be patentable because the court found that matters relating to ornamentation only and having no mechanical function whatever cannot be properly relied on when the claims are not directed to a design but are structural claims. (See *In re Seid* at 433). However, the claims in the present case are indeed structural claims and the limitations required by the claims do not relate to ornamentation but to their mechanical function. In the second case, *In re Dailey and Eilers*, the court found that "Appellants have presented no argument which convinces us that the particular configuration of their container is significant or is anything more than one of numerous configurations a person of ordinary skill in the art would find obvious . . .". (See *In re Dailey and Eilers* at 50). In the present application it is clear that the particular construction of the lever as recited in the claims is significant and is *not* one of numerous configurations a person of ordinary skill in the art would find obvious. First, the prior art discloses two known type of levers as shown in the present application in prior art Figs. 2 and 3. Each of these prior art levers is adapted to receive only a different kind of prior art parking brake cable end. Thus, the prior art only taught a specific one-type of lever capable of receiving a specific one-type of parking brake cable end. As discussed in the present application on page 14, lines 3-8, "One advantage of the vehicle drum-in-hat parking and emergency brake portion 216 of the present invention is that the lever 238 is a *universal lever*, in that the particular shape or geometry of the end 288 of the lever 238 is *adapted to accommodate either* a parking brake cable having a known S-shaped cable end, such as shown at 92 in prior art Fig. 2, and a known clevis shaped cable end, such as shown at 192 in prior art Fig. 3." (Emphasis added). Thus, the lever of the present invention is revolutionary and

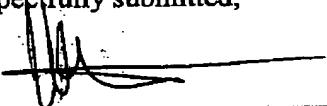
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unique because now a single “universal” lever may be used to replace the two different types of prior art levers that had to be used to accommodate the two different types of prior art parking brake cable ends. Applicant’s invention is not merely one of numerous configurations that can accept one of the prior art cable ends but rather is a unique and novel configuration that can accept both of the prior art cable ends. The prior art never embraced such a lever configuration and the Applicant’s lever was the first to embrace such a revolutionary and unique configuration and hindsight cannot be used to reconstruct the prior art levers in view of Applicant’s own disclosure. Thus, it is clear that the Applicant’s invention, as defined in the claims, is significant and was more than one of numerous configurations a person of ordinary skill in the art would have found obvious. Clearly, the detailed description of the instant application itself provides sufficient evidence that the particular shape of Applicant’s lever is unique and novel and unobvious in construction in view of the prior art lever designs.

In view of the above amendments and accompanying remarks, it is believed that the application is in condition for allowance. However, if the Examiner does not believe that the above remarks and amendments place the application in condition for allowance, or if the Examiner has any comments or suggestions, it is requested that the Examiner contact the Applicants attorney at (419) 255-5900 to discuss the application prior to the issuance of an action in this case by the Examiner.

Respectfully submitted,



Douglas V. Pavelko
Reg. No. 36,888

MacMillan, Sobanski & Todd, LLC
One Maritime Plaza, Fourth Floor
720 Water Street
Toledo, Ohio 43604
(419) 255-5900

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